

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Robert Holland Koon,)	
)	Civil Action No. 8:04-21998-RBH-BHH
Plaintiff,)	
)	
vs.)	<u>REPORT OF MAGISTRATE JUDGE</u>
)	
Richard Bazzle, et al,)	
)	
Defendants.)	
_____)	

The plaintiff brought this action seeking relief pursuant to Title 42, United States Code, Section 1983. On July 29, 2005, the defendants filed a motion for summary judgment. On August 1, 2005, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Despite this explanation, the plaintiff elected not to respond to the motion. On September 9, 2005, the plaintiff filed a "Motion to Dismiss with Prejudice per Rule 41 FRCP."

As the plaintiff is proceeding *pro se*, and out of an abundance of caution, the court filed a second order on October 5, 2005, giving the plaintiff through October 28, 2005, to file his response to the motion for summary judgment. The plaintiff was specifically advised that if he failed to respond, this action would be dismissed for failure to prosecute pursuant to F.R.Civ.P. 41(b), and that the dismissal will be considered an adjudication on the merits, *i.e.*, *with prejudice*. The plaintiff elected not to respond.

Based on the foregoing, it appears the plaintiff no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed, with prejudice, for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. *Ballard v.*

Carlson, 882 F.2d 93 (4th Cir. 1989), *cert. denied*, 493 U.S. 1084 (1990). Because the plaintiff has also moved separately for dismissal of this action, it is further recommended that the plaintiff's motion for dismissal with prejudice be granted.

s/ Bruce H. Hendricks
United States Magistrate Judge

December 14, 2005
Greenville, South Carolina